

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

FUSION ELITE ALL STARS, et al.,

Movants,

v.

REBEL ATHLETIC INC.,

Respondent.

Case No. _____

**PLAINTIFFS' MOTION TO COMPEL REBEL ATHLETIC INC. TO
COMPLY WITH SUBPOENA DUCES TECUM**

COME NOW Plaintiffs Fusion Elite All Stars, Spirit Factor LLC d/b/a Fuel Athletics, Stars and Stripes Gymnastics Academy Inc. d/b/a Stars and Stripes Kids Activity Center, Kathryn Anne Radek, Lauren Hayes, and Janine Cherasaro (collectively, "Plaintiffs"), individually and on behalf of all others similarly situated, and respectfully move this Court, pursuant to Fed. R. Civ. P. 37 and 45(d)(2)(B)(i), to compel non-party Rebel Athletic Inc. ("Rebel") to respond to the Subpoena Duces Tecum ("Subpoena") served by Plaintiffs pursuant to Rule 45 on November 17, 2020. In support of this motion, Plaintiffs state as follows:

1. Plaintiffs served their Subpoena on Rebel on November 17, 2020 with 37 requests for production. After several discovery conferences and extensions of Rebel's deadline to respond, raise objections, and moving to quash or modify the subpoena, Rebel served its written objections on February 26, 2021. Rebel followed up on March 2, 2021 with the service of 57 pages of documents.

2. The parties continued to conference regarding Rebel's responses, and Plaintiffs submitted a proposal modifying and narrowing the requests for production to Rebel on April

28, 2020. Counsel for Rebel stated in correspondence that Rebel would consider and respond to that proposal, but Plaintiffs were unable to reach rebel again until June 9, 2021. At that conference, Rebel disclosed that it had made no further efforts to collect or identify responsive documents.

3. On June 14, 2021, Rebel informed Plaintiffs that it would provide nothing further in response to the Subpoena. On the same day, a caller identifying herself as Rebel's Vice President of Sales called the president of Plaintiff Fusion All Stars, under the pretext of trying to sell the gym merchandise, threatened her and told her to "call off" her lawyers.

4. Rebel makes boilerplate objections to the Subpoena that have no basis in fact or law. It has provided no evidence supporting its claim that the requests for production are overbroad, vague, unduly burdensome, irrelevant. Its certification of those objections and its refusal to cooperate and produce responsive documents, data, and electronically stored information violate Rules 26, 37, and 45 of the Federal Rules of Civil Procedure.

For these reasons and those set forth in the Memorandum of Law in Support, Plaintiffs respectfully request that this Court grant the instant motion; order Rebel to respond fully to Request Nos. 1, 3 through 9, 12 through 33, and 37 set forth in Schedule A to the Subpoena; and further order to pay the attorneys' fees and expenses incurred by Plaintiffs in bringing this motion.

Dated: July 9, 2021

Respectfully submitted,

By: /s/ LSByrd
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CERTIFICATE OF CONFERENCE

In accordance with Local Rule 7.1(a), counsel for Plaintiffs, Katherine Van Dyck, conferred with counsel for Rebel, John David Blakely, on multiple occasions regarding the Subpoena that is the subject of this motion and Rebel's objections and responses thereto. The first telephonic conference occurred on December 10, 2020, and the last telephonic conference occurred on June 16, 2020. Further details are set forth in the Declaration of Katherine Van Dyck, included in the Appendix filed with this motion. The parties were unable to reach agreement on the proper scope of the Subpoena, necessitating the instant motion by Plaintiffs. Rebel does not consent to the relief sought herein.

/s/ LSByrd
Lynette S. Byrd

CERTIFICATE OF SERVICE

I hereby certify that on July 9, 2021, the foregoing document was filed with the court via the Electronic Case Filing (ECF) system and duly served in accordance with the provisions of Rule 5 of the Federal Rules of Civil Procedure, by both U.S.P.S. Priority Mail and electronic mail, to the following recipient:

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